IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

LaMARQUIST MATTHEWS, et al.,	)	
Plaintiffs,	)	
v.	)	**No. 03-2600-D**
TERESA J. SIGMON, et al.,	)	
Defendants.	)	

ORDER DENYING STATE VOLUNTEER MUTUAL INSURANCE COMPANY'S MOTION TO RECONSIDER; DENYING MOTION TO CERTIFY QUESTIONS OF STATE LAW; AND DENYING MOTION TO PERMIT INTERLOCUTORY APPEAL

Before the Court is the motion of State Volunteer Mutual Insurance Company ("Defendant SVMIC") for reconsideration, or in the alternative, motion to certify questions of state law or, in the alternative, motion to permit interlocutory appeal. On September 13, 2004, this Court entered an order granting in part and denying in part the motion of Stephanie A. Storgion, M.D.; Teresa J. Sigmon; Sigmon Law Firm; and State Volunteer Mutual Insurance Company ("SVMIC") (collectively "Defendants") to dismiss the complaint, or, in the alternative, for summary judgment. Defendant SVMIC contends that the Court should reconsider its determination that a genuine issue of material fact exists as to whether Defendant SVMIC knowingly authorized Defendant Teresa Sigmon's conduct, such that SVMIC could be vicariously liable. For the following reasons, the Court denies Defendant SVMIC's motion to reconsider, motion to certify questions of state law, and motion for interlocutory appeal.

I. MOTION TO RECONSIDER

Defendant SVMIC first moves the Court for reconsideration of this Court's Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment ("Order"), entered September 13, 2004. Defendant SVMIC asserts that this Court's ruling does not satisfy the

Tennessee Supreme Court's holding in Givens v. Mullikin, 75 S.W.3d 383 (Tenn. 2002). Specifically, Defendant SVMIC maintains that this Court's purported determination that Defendant SVMIC's alleged "inaction" may create vicarious liability, contradicts In re Youngblood, 895 S.W.2d 322 (Tenn. 1995).

A motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) may be made for one of three reasons:

1) An intervening change of controlling law;
2) Evidence not previously available has become available; or
3) It is necessary to correct a clear error of law or prevent manifest injustice.

Fed. R. Civ. P. 59(e); Helton v. ACS Group and J&S Cafeterias of Pigeon Forge, Inc., 964 F. Supp. 1175 (E.D. Tenn. 1997). Rule 59 is not intended to be used to "relitigate issues previously considered" or to "submit evidence which in the exercise of reasonable diligence, could have been submitted before." Id. at 1182. Thus, there are limited circumstances in which a court may grant a motion to alter or amend a judgment.

The primary premise of Defendant's motion to reconsider is that this Court's interpretation of Givens is an error of law, based on the holding in Youngblood. In Youngblood, the Tennessee Supreme Court warned insurers that they could not "control the details of the attorney's performance, dictate the strategy or tactics employed, or limit the attorney's professional discretion with regard to the representation." Youngblood, 895 S.W.2d at 328. In Givens, the Tennessee Supreme Court recognized that, despite the warning in Youngblood that insurers should not control an attorney's performance, an insurer could be vicariously liable for the actions of the attorney if the insurer took certain prohibited action. See Givens, 75 S.W.3d at 393. In the Court's September 13, 2004 Order, the Court noted that, per Givens, "[a]n insurer and insured may be liable for the acts of the attorney if the acts or omissions were 'directed, commanded, or knowingly authorized' by the insurer or the insured." Order at 20 (citing Givens, 75 S.W.3d at 395, 397). The Court determined that a genuine issue of material fact exists as to whether Defendant SVMIC "knowingly authorized"

Defendant Sigmon's actions. In so ruling, the Court relied on the fact that James Trimbach, the claims attorney for SVMIC who handled the file in the underlying state court action, received an e-mail from Defendant Sigmon in which she informed him that she had contacted the FDA about Mr. Scott. Id. The e-mail, sent on August 28, 2002, from Defendant Sigmon to Mr. Trimbach states

> Hi Jim,
>
> > The person I spoke with yesterday [at the FDA] advises that in her 20 years with the FDA she does not believe that anyone has ever gotten permission to testify in a civil case. She would have been involved in approving Scott's participation in this case and was very sure that he had not obtained it. She had me fax a letter to her boss, the director of the department, asking for an official response. She wanted me to include the fact that Scott was charging for his testimony which apparently is also taboo.

See Pl.'s Resp. to Defs.' Mot. to Dismiss, or in the Alternative, For Summ. J. After August 28, 2002, Defendant Sigmon continued repeatedly to contact Mr. Scott's employer. See Order at 4. The Court determined that this was sufficient to create a genuine issue of material fact as to whether Defendant SVMIC knowingly authorized Defendant Sigmon's actions. Nothing in the Court's Order contradicts Youngblood or Givens.

Defendant SVMIC also asserts that the claims against it should be dismissed because Plaintiffs failed to establish that Defendant SVMIC "directed, commanded, or knowingly authorized" the specific torts. This is the first time that Defendant has raised this argument. Moreover, even had Defendant asserted this argument previously, it is without merit. In certain instances, the law of agency subjects a principal to vicarious liability for actions taken by an agent on behalf of the principal. The claims asserted by Plaintiffs are claims arising from the alleged conduct of Defendant Sigmon. As discussed *supra*, the Court has determined that a genuine issue of material fact exists as to whether Defendant SVMIC knowingly authorized the conduct which led to Plaintiffs' claims. Defendant SVMIC may therefore potentially be subject to vicarious liability for Defendant Sigmon's alleged conduct. The Court finds that no grounds exist to alter or amend the Court's Order. Accordingly, the Court denies Defendant SVMIC's motion for reconsideration.

II. MOTION TO CERTIFY QUESTIONS TO THE TENNESSEE SUPREME COURT

Defendant SVMIC alternatively moves the Court to certify two questions of law to the Tennessee Supreme Court. First, Defendant asks the Court, in light of In re Youngblood, 895 S.W.2d 322 (Tenn. 1995), and Givens v. Mullikin, 75 S.W.3d 383 (Tenn. 2002), to certify the question of whether "inaction" on part of an insurance company suffices to meet the "actual control" element required by Givens in order to expose the insurer to vicarious liability under Tennessee law for conduct by an insured's attorney. Additionally, Defendant asks the Court to certify to the Tennessee Supreme Court the question of whether Defendant Sigmon's alleged conduct in contacting a federal agency employer of an adverse witness is actionable under Tennessee law.

Federal courts may certify questions to a state court if doubt exists as to the status or application of state law. See Geib v. Amoco Oil Co., 29 F.3d 1050 (6th Cir. 1994). "[T]he Supreme Court has recommended that [federal courts] use certification to address 'the problem of authoritatively determining unresolved state law involved in federal litigation.'" Id. at 1061 (quotation omitted). With respect to the first question, the Court finds that there is no uncertainty as to the meaning of either Youngblood or Givens. Rather, the Court finds that the only uncertainty is as to whether Defendant SVMIC knowingly authorized, pursuant to Givens, Defendant Sigmon's alleged conduct. This is a question of fact, not law. The Court therefore denies Defendant SVMIC's motion to certify the question related to the meaning of Givens.

With respect to the second question, the Court finds that a question does remain as to whether Defendant Sigmon's alleged conduct in contacting a federal agency employer of an adverse witness creates an actionable claim under Tennessee law. This Court, however, previously granted Defendants Teresa Sigmon and the Sigmon Law Firm an interlocutory appeal on this issue. See Order Den. Defs.' Mot. to Recons., Den. Defs.' Mot. to Certify Questions of State Law, and Granting Defs.' Mot. to Permit Interlocutory Appeal at 3-4 (entered October 25, 2004). The Court finds therefore that certification of this question to the Tennessee Supreme Court is not necessary. Accordingly, the Court denies Defendant's motion to certify questions of state law.

III. MOTION TO PERMIT INTERLOCUTORY APPEAL

Finally, Defendant SVMIC moves the Court to permit an interlocutory appeal as to the issues of whether 1) "inaction" on the part of an insurance company suffices to meet the "actual control" element required by Givens in order to expose the insurer to vicarious liability under Tennessee law for conduct by an insured's attorney, and 2) Defendant Sigmon's alleged conduct in contacting a federal agency employer of an adverse witness is actionable under Tennessee law.

Normally, the United States Court of Appeals for the Sixth Circuit will not entertain appeals of interlocutory decisions. However, in its discretion, a Court of Appeals may permit an appeal, provided the district court certifies that: (1) the issue involves a controlling question of law; (2) there is substantial ground for difference of opinion; and (3) an immediate appeal may materially advance the ultimate termination of the litigation. See 28 U.S.C. § 1292(b); In re Baker & Getty Fin. Servs., Inc., 954 F.2d 1169, 1172 (6th Cir. 1992).

With respect to the first issue, the Court finds that the issue does not involve a controlling question of law. Givens provides that an insurer may be vicariously liable for the acts of the attorney if the acts or omissions were "directed, commanded, or knowingly authorized" by the insurer. Givens, 75 S.W.3d at 395, 397. This Court determined, pursuant to Givens, that a genuine issue of material fact exists as to whether Defendant SVMIC knowingly authorized Defendant Sigmon's alleged conduct. Thus, the issue is a question of fact, not a question of law. The Court finds therefore that the issue is not subject to certification for interlocutory appeal.

With respect to the second issue, as noted *supra*, on October 25, 2004, the Court entered an order granting Defendants Teresa Sigmon and the Sigmon Law Firm's motion for an interlocutory appeal on this issue. See Order Den. Defs.' Mot. to Recons., Den. Defs.' Mot. to Certify Questions of State Law, and Granting Defs.' Mot. to Permit Interlocutory Appeal at 3-4 (entered October 25, 2004). The Court therefore finds that a second interlocutory appeal on the issue is not necessary to advance the ultimate termination of this litigation. Accordingly, the Court denies Defendant SVMIC's motion for interlocutory appeal.

IV. CONCLUSION

For the foregoing reasons, the Court denies Defendant SVMIC's motion to reconsider, or in the alternative, to certify questions of state law, or in the alternative, for interlocutory appeal, as this Court has already granted Defendants Sigmon and the Sigmon Law Firm permission to file an interlocutory appeal.

IT IS SO ORDERED this _____ day of December, 2004.

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BERNICE BOUIE DONALD
UNITED STATES DISTRICT COURT